IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition (L) No. 803 of 2007

1. Ameet Navinchandra Patel]
aged 44 years, Indian Inhabitant]
of Mumbai residing at 601]
Vimal Kunj, Meera Baug]
Santacruz (W), Mumbai 400054]

2. Alpana Shetty]
aged 42 years, Indian Inhabitant]
of Mumbai residing at 3 Umang]
1st floor, 16th Road]
Santacruz (W), Mumbai 400054]

3. Arnal Ganesh Gopal]
aged 43 years, Indian Inhabitant]
of Mumbai residing at B-18]
Bhagwati Linking Road Extension]
Santacruz (W), Mumbai 400054]

4. Anand Yogendra Desai]
aged 42 years, Indian Inhabitant]
of Mumbai residing at Birla]
House, 3, Birla Lane, Juhu]
Mumbai 400 054]

5. Dilip Shinde]
aged 43 years, Indian Inhabitant]
of Mumbai residing at B 16]
Girikunj, Linking Road Extension]
Santacruz (W), Mumbai 400054]

6. Nilesh Gandhi]
aged 38 years, Indian Inhabitant]
of Mumbai residing at B 702]
New Kamleshwar, Tagore Road]
Santacruz (W), Mumbai 400054] ...Petitioners

VERSUS

1. The President]
Arya Vidya Mandir Society]
having its office at St. Cyril Road]
Bandra (W), Mumbai 400050]

2. The Head Mistress]
Arya Vidya Mandir Girls High School]
Santacruz (W), Mumbai 400054]

3. The Education Inspector]
West Zone, Jogeshwari (East)]
Mumbai 400 060]

4. The Education Inspector]
Primary Section]
Municipal Corpn. of Greater Mumbai]
having his office at Opp. Raje]
Shivaji Vidyalaya, Dadar, Mumbai]

5. The Deputy Director of Education]
Nehru Bal Bhavan, Charni Road]
Mumbai]

6. The Director of Education]
Central Building, Pune Station]
Pune 411001]

7. The Secretary]
Council for Indian School]
Certificate Examination Board]
having his office at Pragati House]
3rd floor, 47-46 Nehru Palace]
New Delhi 110 019]

8. The State of Maharashtra]
(writ to be served on the]
Secretary, Government of Maharashtra]
School Education Department]
Mantralaya, Mumbai 400 032)] ...Respondents.

Mr. M.M. Vashi with Ms. Saloni Desai i/by M/s M.P.Vashi and Associates for the petitioners

Mr R.A. Dada with Mr. F.E. D' vrie with Mr. J.P. Sen and Mr. F. Dubash i/by M/s Federal & Rashmikant for respondent Nos.1 and 2

Mr R.M. Kadam, Advocate General, with Mr. A.A. Kumbhakoni, Associate Advocate General, for respondent Nos. 3 to 8.

CORAM: SWATANTER KUMAR,C.J., &
S.C. DHARMADHIKARI, J.

JUDGMENT RESERVED ON: APRIL 12, 2007
JUDGMENT DELIVERED ON: APRIL 19, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):-

1. The petitioners who are parents of the girl students studying in Arya Vidya Mandir Girls High School, Santacruz(West),

Mumbai, have questioned the legality and correctness of the no objection certificate-cum-order dated 2nd April, 2007 issued by the respondent authorities. The relevant directions read as under:-

> "Considering the above arguments put forth by both the parties and scrutinising all the documents, I pass the following order:
>
> i) As per the guidelines given by the Hon'ble High Court in Writ Petition No.1883 of 2000, the State Government encourages the policy of co-education. Hence, the State Government has no objection for conversion of girls' school at Santacruz (West) into co-education school.
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> ii) The State Government has no objection for shifting the classes in Arya Vidya Mandir Schools at Santacruz(West) and Bandra (West), subject to obtaining necessary permission from the Council for Indian School Certificate Examination (ICSE)."

2. A three-fold challenge is raised to the said circular i.e. (a) it is a non-speaking order, various points raised in the representations of the petitioners have not even been touched, much less discussed, by the authorities in the impugned order. Thus, the order suffers from the infirmity of non-application of mind;

(b) the order passed by respondent No. 8 is contrary to the circulars of the Government; the stand taken in the affidavit, in fact, is an arbitrary exercise of power, inasmuch as the field officers of the respondents were under statutory obligation to conduct inspection in regard to the infrastructural facilities available and that no such certificate has been issued; (c) the permission granted by respondent No.8 to shift the school is likely to cause serious prejudice to the interest of the students and the parents. There is no justification whatsoever for introducing the co-education in preference to the schools only for girls and/or for boys.

3. The above contentions are on the premise that the petitioners have genuine interest in the education of their wards, while respondent nos. 3 to 6 are the officers of the education department of the respondent State and respondent No.7 is a society registered under the Societies Registration Act granting affiliation to various schools in India for Indian School Certificate Examination, for short referred to as 'ISCE'. Respondent Nos. 1 and 2 are the management and

Head Mistress of the school at Santarcuz run by the Arya Vidya Mandir Society and the children of the petitioners were studying there. Only girls schools were being run by the society on the principle of Arya Samaj. The petitioners were desirous of enrolling their daughters into a school close to their residence and in a small school where the teachers can pay personal attention to the education of the children, on the assurance that there will be only girls schools. The management of the school was running three schools at Bandra(East), Bandra (West) and at Juhu. All these three schools are co-educational schools and have classes with multiple divisions. The petitioners took admission for their wards in the school at Arya Vidya Mandir Girls High School, Santacruz (West), as the said school prepares students for the examination conducted by the ISCE, to whom the school was affiliated. The permission / affiliation granted by respondent No.7 is in relation and on the premise that the school was recognised by other respondents as well. Respondent No.1, vide their circular dated 13th January 2006, issued a general information that the management had taken a decision to merge two schools by making Arya Vidya Schools

into a co-educational school – society by shifting girls school from Santarcuz (West) from classes III to X to Bandra and further classes from nursery to Class II were to be conducted at the said school at Santacruz. The circular contains details in regard to the implementation of the above programme. A meeting of more than 200 parents, according to the petitioners, was held on 16th January 2006. During the said meeting parents decided to oppose the implementation of the said circular. Various grounds were taken by the parents, including uprooting of their children, and in fact, the respondents earlier had stated that the school would be continued to be a girls school and not a co-educational school and there would be the likelihood of adverse effect or trauma of conversion of girls school into a co-educational school. Respondent No.1 was, therefore, directed to hold a meeting of the Parent Teachers Association to discuss the issue. Despite persistent request, the petitioners' request was not acceded to and in fact, their grievances were not being looked into and no solution was suggested. Vide their letter dated 2nd February 2006, the petitioners informed the respondents that they found

that the ratio of boys and girls at Bandra school is 80:20 even after a period of 12 years and the parents of the said school do not wish to send their wards to any co-educational school. Vide their letter dated 14th February, 2006 addressed to all the parents, the respondents stated that the circular dated 13th January 2006 had not been withdrawn; but they are considering the reschedule of the implementation of reorganisation and restructuring the process outlined in the said circular. Thereafter also, the petitioners and different people persisted with their request of withdrawing the said circular and they wrote letters under the Right to Information Act, 2005 requiring them to give certain information; but no reply was received. On 18th October 2006, vide advocate' s notice, all the detailed facts were furnished and they asked for no objection, if granted to the school. The learned counsel, vide same letter, also requested affiliating bodies not to give permission to shift the school from Santacruz to Bandra. The no objection certificate was issued vide letter dated 2nd April 2006. The petitioners, being aggrieved by the issuance of the said letter, filed a writ petition before this Court, being Writ Petition

No. 58 of 2007, challenging the No Objection Certificate dated 2nd April, 2006. This writ petition was disposed of by an order of the Division Bench dated 26th March, 2007, which reads as under:-

> "Heard. Petitioners who are seven in number have invoked the writ jurisdiction of this Court impugning the decision of respondent Nos.1 and 2 of relocating their girls school from Santacruz to Bandra (West), being without permission of the competent authority as provided under Rule 7.6 of the Secondary School Code 2002.
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> 2. On being served by writ of this Court, in reply, respondent Institution has justified its stand on the ground that they have initiated process of relocation after seeking permission from the Deputy Director of Education and in their submission, Rule 7.6 of the Secondary School Code would not apply. In the affidavit in reply filed on behalf of the State which is sworn by Deputy Secretary, School Education and Sports Department, it has accepted the case of petitioners to the extent that Rule 7.6 of the Code does require permission from the State Government before shifting the said school from its existing location to any other location and that the order which came to be passed by the Dy. Director, was under the impression that as it is only re-organisation and/or re-structuring classes in the school, which is internal management of the school, the same is not covered by Rule 7.6.

> 3. Without going into the controversy, we find that the respondent Nos. 1 and 2 can be directed to approach the competent authority i.e. 8th respondent to consider the application annexed as Exh.S to the petition, after giving opportunity to the parties of hearing in consonance with the principles of natural justice and then pass a reasoned order and dispose of the application on or before 2nd April 2007. We further make it clear that though the application is addressed to the Dy.Director of Education, the same may be considered as addressed to respondent No.8. Parties agree that they would appear before the Competent Authority i.e. Deputy Director, School Education and Sports Department, who has sworn the affidavit on behalf of respondent No.8 on 28th March 2007 at 11.00 a.m. In case any of the parties want to file additional pleadings and reply, they may do so on the said date and thereafter the competent authority would proceed to hear them and take a decision in the matter within the stipulated time.
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> 4. We make it clear that this is without prejudice to the rights of the parties, particularly respondent Nos. 1 and 2 to raise the issue of applicability of Rule 7.6 of the Code. Petition stands disposed of accordingly.
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> All concerned to act on an authenticated copy of this order. Learned Associate Advocate General to communicate this order to the Competent Authority forthwith."

4. In furtherance to the above order of this Court, the petitioners filed their objections before the Competent Authority in great

detail along with objections, requiring the authorities not to permit shifting of the school from Santacruz to Bandra. They also filed 90 letters addressed by various parents opposing the said application, copy of which is annexed at Exhibit 'H' to the petition. The management of the school also filed replies before the authorities. However, after considering the replies and objections, Respondent No.8 passed the impugned order dated 2nd April, 2007, giving rise to the filing of the present writ petition.

5. The stand of the Government, Education Authorities and the Management of the school is somewhat common, while, according to the Management, the schools are well-established schools having the required infrastructural facilities, to which, in fact, there is no dispute even in the petition; and as such, the absence of the Chief Officer's report or of the Field Officer in that regard would be inconsequential and causes no prejudice to any concerned.

6. Reliance was heavily placed upon the judgment of the Supreme Court on *T.M.A. Pai Foundation & Ors. v. State of Karnataka & Ors.* [(2002) 8 Supreme Court Cases 481], to contend that in Maharashtra, the school would be a minority-managed school; and as such, the Government and other authorities can hardly interfere in the management policy of the school. The management has taken a decision for re-organisation or shifting of the school. It is already averred in the reply that AVM Santacruz School was the co-ed school or AVM Bandra (West) School, started as an all boys school in 1980, has two divisions. The Santacruz School was converted into all girls school. Until 1994, the Bandra (West) School was an all boys school; and thereafter, it was converted into a co-educational school, in keeping with the changing time. AVM Juhu School was started as a co-ed school in 1989 and was an ICSE School, but was subsequently converted into a boys school. The AVM School at Bandra (West) was set up as a co-educational school in 1999. Each of the schools / institutions took into account the need and resources of the AVM Society, the most value-based education; and thus, the decision in question was taken.

7. The school has also taken up the plea that the school premises of AVM Santacruz belong to Arya Samaj, Santacruz. Arya Samaj has permitted the school to operate from its premises. The Santacruz School has inherent concern on its infrastructure that limits its scope for further future growth; and in addition to the new policy, the school at Santacruz prefers only non co-education in the group of AVM Schools over a period of time and to make it in conformity with the policy, the decision has been taken. Most of the parents prefer to have their more than one child in one school, if possible; and in fact, most of the parents have already accepted the decision and admitted their children in the school. Vide its Circular dated 14th February, 2006, the parents were informed of the decision and proposed changes. It is not disputed that some objections were taken for a while, but thereafter, the decision was fully implemented, and in the meeting of the Executive Committee of the school, after PTA, the matter was extensively discussed and the stand of the school was reiterated.

According to the Government, it is their policy decision to have co-educational schools and the absence of the Field Officer would, in no way, affect the decision. The Santacruz (West) School would have classes from Nursery to II, while the Bandra School would have classes VIII to X. The decision of the Government, in fact, is in conformity with the Court decision as well. The main decision was taken by the Government. The no objection or requisite permission has been issued by the Government. In fact, as is clear from the impugned order, the permission has also been granted, subject to their seeking appropriate permission from other authorities.

8. In the case of *T.M.A. Pai* (supra), the Supreme Court held as under:-

> "54. The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers

and staff for appointment or nominating students for admissions would be unacceptable restrictions.

...

56. An educational institution is established for the purpose of imparting education of the type made available by the institution. Different courses of study are usually taught by teachers who have to be recruited as per qualifications that may be prescribed. It is no secret that better working conditions will attract better teachers. More amenities will ensure that better students seek admission to that institution. One cannot lose sight of the fact that providing good amenities to the students in the form of competent teaching faculty and other infrastructure costs money. It has, therefore, to be left to the institution, if it chooses not to seek any aid from the Government, to determine the scale of fee that it can charge from the students. One also cannot lose sight of the fact that we live in a competitive world today, where professional education is in demand. We have been given to understand that a large number of professional and other institutions have been started by private parties who do not seek any governmental aid. In a sense, a prospective student has various options open to him/her where, therefore, normally economic forces have a role to play. The decision on the fee to be charged must necessarily be left to the private educational institution that does not seek or is not dependent upon any funds from the Government.

...

61. In the case of unaided private schools, maximum autonomy has to be with the management with regard to administration, including the right of

> appointment, disciplinary powers, admission of students and the fees to be charged. At the school level, it is not possible to grant admissions on the basis of merit. It is no secret that the examination results at all levels of unaided private schools, notwithstanding the stringent regulations of the governmental authorities, are far superior to the results of the government-maintained schools. The rush for admission is occasioned by the standards maintained in such schools, and recognition of the fact that State-run schools do not provide the same standards of education. The State says that it has no funds to establish institutions at the same level of excellence as private schools. But by curtailing the income of such private schools, it disables those schools from affording the best facilities because of a lack of funds."

9. These principles, thus, indicate that interference of the Department of Education of the State has to be limited; and they can hardly interfere in the internal management of the institution, except insofar as it is so specifically provided under law. The management, in their wisdom, has taken a decision, and they wish to implement the decision with the permission of the concerned authority which has been granted to them. It is contended on behalf of the management that the distance between the two schools is less than 3 kms.; and the school bus service is duly provided by the schools. Infrastructural facilities

are provided in the schools and the details of the facilities have been provided in the letter of 31st March, 2007 written by the Architect. There is no challenge to this document, and, in fact, this was not even the case of the petitioners before the Court or before the authorities that the school does not have sufficient infrastructural facilities, as contemplated under the Guidelines issued by the Competent Authorities. It is, certainly, a matter which should have attracted the attention of the concerned authority; and the Field Officer should have visited the premises to verify this fact. There is no dispute before us in that regard and, in fact, it was vehemently stated on behalf of the management of the school that AVM Schools are few of the best educational institutions in the city. Be that as it may, we would still direct the Field Officer to inspect the school, and submit his report to the concerned authorities in the event there is lack of infrastructural facilities in terms of the Guidelines provided by the Department of Education.

10. The next question that the Court has to consider is: Whether the introduction of a co-educational institution and grant of

no objection certificate smacks of arbitrariness or is a matter which is well-considered and is in conformity with the policies of the State?

11. On 28th November, 2003, vide Exhibit 2 to the affidavit of the Deputy Secretary, School Education and Sports Department, in Writ Petition No. 58 of 2007, the Government of Maharashtra had passed Resolution No. NAMASHA 1003/(534/03)/SE-1, and had taken a conscious decision in regard to improving the education system in the State as well as for introduction of co-educational system. Relevant portion of this Resolution with the background to the Resolution can be usefully reproduced at this stage:-

> "There has been growth and extension of secondary schools to large extent along with the universalisation of primary education. Education being the basic instrument for personality development, emphasis has been given on Girls education. To spread the secondary education among girls, the policy of allowing special girls schools was adopted, because of which many special girls schools came into existence. The special girls schools were very useful to spread education among girls when the scope of secondary education was

limited. Since last few years the Government is giving permission to open schools on large scale specially after 24th November, 2001, the spread of secondary education is on large scale specially because of the policy of allowing schools to open on permanent non-grant basis. Because of the spread of secondary education specially due to non-grant basis and permanent non-grant basis, special girls schools are finding difficult to get the girl students and the Government is receiving proposal requesting conversion of existing girls school to co-educational school. To remove the feelings of gender differences and to have an opportunity for proper personality development, the concept of co-education hence needs to be encouraged. In Writ Petition No. 1773/2000, Hon. High Court, Mumbai has passed an order and directed that henceforth no separate permission should be given to Girls schools. The matter of deciding the policy for conversion of the existing girls schools into co-education school was under the consideration of the Government.

Resolution: Considering the permission given by the Government to run special girls school and also taking into consideration changes occurred with the time, if the respective managements request for conversion of the girls school in co-education school, the permission may be given on following terms and conditions:

> (1) The management should submit the proposal for conversion of girls school to co-education school through the field officers to the State Government.
>
> ....' '

The above decision, thus, specifically required that the management of the school should submit the proposal for conversion of girls school to co-educational school through the Field Officer of the State Government.

12. The above decision of the Government, in fact, was examined by a Division Bench of this Court in the case of *Gram Vikas Shikshan Prasarak Mandal, Sondoli V/s. State of Maharashtra & Ors*. [2001 (1) Mh.L.J. 776]. The Court not only examined this Resolution, but also, on its own, observed about the necessity for introduction of co-educational system. While referring to this policy in paragraph 7 of the judgment, and dealing with the subject of school permissions, it directed in Clause (3) as under:-

> "No separate girls schools will be sanctioned in future. Permissions will be granted only to start co-educational schools."

We are informed that the view of the Court in the judgment has attained finality. The submissions made on behalf of the petitioners, thus, are clearly covered by the judgment of this

Court; and we see no reason to take a different view. Once the Court has not only followed the policy of the State, but, in fact, has made a specific provision for introduction of a co-educational school, all concerned are expected to adhere to the same, unless and until the said view was held to be incorrect in law by the Court of competent jurisdiction.

13. Some emphasis was placed by the learned counsel appearing for the petitioners on paragraphs 5 to 7 of the affidavit dated 3rd March, 2007 filed on behalf of the Education Department in Writ Petition No. 58 of 2007, to contend that the stand now taken and in the said affidavit is contradictory in terms. In the said affidavit, it was averred that the Deputy Director was under the impression that as it was only re-organising and re-structuring the classes in the school, which was an internal management of the school, the same was not covered under Rule 7.6 of the Secondary Schools Code. Subsequently, the authorities came to know that it was actually the shifting of the part of the school to another location, and the same was covered under Rule 7.6 of the Schools Code. As no application was

made at that time in terms of Condition 'C' of the Guidelines for affiliation, it is mentioned that any branch or unit of the school would not be deemed to have been affiliated to the Council, unless that branch or unit applies afresh and is granted permission by the Council in terms of the Guidelines. However, in this affidavit, it is specifically stated that the no objection for shifting was necessary. It is not in dispute before us that the same has been granted vide letter dated 2nd April, 2007. Once the application has been moved - maybe subsequently - and the parties were permitted to file objections in deference to the order passed by this Court, and the authorities concerned have passed an order in accordance with the principles of natural justice, such decision would hardly call for any judicial intervention.

14. The argument that the order suffers from the infirmity of non-application of mind is equally unsustainable. In fact, the administrative authorities are not expected to recite reasons like in judgment; but the record and orders must show that they have applied their mind. After noticing various objections raised

by the parties and their submissions, the conclusion as aforesaid was recorded by the authority concerned. They have issued No Objection Certificate for shifting the classes, subject to obtaining necessary permission from the Council for Indian School Certificate Examinations. The primary school or the school up to Standard V does not require any affiliation to the Council; but the branch where there are higher classes, admittedly, is recognised and affiliated to the Council. That the shifting of classes to Santacruz would render other school as a primary school by itself would be no ground for this Court to interfere in the exercise of jurisdiction by the concerned authority. The authorities, in their wisdom, have taken a view which does not suffer from element of arbitrariness or discrimination. The policy of the Government was considered and approved by the Court; and that, to a great extent, would dilute the effect of the submissions made on behalf of the petitioners in the present case. We have not gone into the question of the school being a minority institution, in view of the fact that the principal contentions raised before us otherwise have no merits. In exercise of its right of internal management,

the school has taken a decision to improve its standard of education and to bring the policy of the school in line with the policy of the State. To this decision, permissions have been granted by the Competent Authorities. The decision of the management, by and large, has already been implemented. Thus, it would not even be otherwise fair to direct *status quo ante,* as it is likely to upset the settled thing, which has settled in accordance with law, rather than correcting a wrong. We may also notice that the Council for Indian School Certificate Examinations, vide its letter dated 3rd May, 2006, clearly notified the school that as per the Guidelines for Affiliation, the school is considered for affiliation when it has class VI. Affiliation may not be transferred. However, the AVM School at Bandra has classes from III to X; and is sending up candidates for ICSE Class X Examination conducted by this Council, and the said school will make it to the list of the affiliated schools. In the face of this letter, even the last objection raised on behalf of the petitioners does not subsist.

15. Lack of merits in the submissions made on behalf of the petitioners leaves no doubt in our mind that the order dated 2nd April, 2007 cannot be quashed by this Court in exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India.

16. While dismissing this petition, we, however, direct that the Field Officer of the State Government shall inspect the school, and submit his report in regard to infrastructure and existence of facilities to the Competent Authority in terms of Clause (1) of Government Resolution dated 28th November, 2003; and if the facilities are found to be lacking, the respondents concerned shall act in accordance with law. We leave the parties to bear their own costs.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.